

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 2020-247-A

In the Matter Of)	
)	
Public Service Commission Review of)	REPLY COMMENTS OF
South Carolina Code of Regulations Chapter)	PIEDMONT NATURAL
103 Pursuant to S.C. Code Ann.)	GAS COMPANY, INC.
Section 1-23-120(J))	
)	

Pursuant to the Public Service Commission of South Carolina's ("Commission") April 6, 2021 5th Amended Notice of Workshops ("Notice"), Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company") hereby submits the following comments in response to the initial comments filed by Upstate Forever ("Upstate"), the Southern Environmental Law Center ("SELC"), the Niskanen Center ("Niskanen"), the Property Rights and Pipeline Center ("PRPC"), and the Blue Ridge Environmental Defense League ("Blue Ridge") (collectively, the "Environmental and Landowner Advocates") on April 6, 2021 and by the Department of Consumer Affairs ("DCA") initial comments filed on April 6, 2021.

BACKGROUND

On October 14, 2020, the Commission filed its Notice of Review of Chapter 103 of the S.C Code of State Regulations to provide notice that, pursuant to S.C. Code Ann. § 1-23-120(J), it would formally review its regulations and reserved several dates to hold stakeholder workshops to facilitate this periodic review.

On December 7, 2020, the Commission filed a Notice of Workshop, which has since been revised several times, in which it provided specific dates for the

workshops to facilitate formal review of the Commission's regulations and set dates for comments of interested parties.

On April 6, 2021, pursuant to the 4th Amended Notice of Workshop, Upstate, SELC, Niskanen, PRPC, and Blue Ridge submitted comments related to S.C. Code Ann. Regs. 103-400 *et seq.*

In these initial comments, the Environmental and Landowner Advocates raised concerns regarding condemnation rights and proposed several changes to the Commission's regulations and procedures regarding placement and construction of natural gas facilities on a going forward basis.

On April 6, 2021, the DCA also filed comments in this docket in which they proposed changes to P.S.C. Rules 103-441, 103-442, and 103-452 to require more precise definitions around the period of time in which the utility or customer may take certain actions related to termination of service, to extend existing notice of termination periods, or provide a moratorium for service connections during the months of June through September (in addition to the current rule which establishes such a moratorium during the months of December through March).

REPLY COMMENTS

These Reply Comments respond to: (1) the initial comments and suggestions of the Environmental and Landowner Advocates for changes in the way in which natural gas utility transmission infrastructure is authorized and include proposals for a substantial rewrite of the provisions of the Commission's Rules governing expansion of existing natural gas transmission systems; and (2) the initial comment suggestions of the DCA relative to certain termination of service procedures.

Environmental and Landowner Advocate Comments

The comments and suggestions of the Environmental and Landowner Advocates are contrary to the longstanding practice regarding natural gas system expansions in this State, constitute efforts to effectuate involuntary changes in the way in which energy is provided to the citizens of South Carolina, and are contrary to existing South Carolina policy as expressed in the statutes governing the relative rights and obligations of various parties impacted by the construction and expansion of utility infrastructure in this state.¹

Piedmont, like other natural gas utilities in South Carolina and upon notice to the Commission, has long been able to expand its system to meet growing customer demand in areas within and contiguous to its existing service area.² This process has not previously involved significant Commission oversight as it primarily involves a highly technical analyses of pipeline operational design and gas flows coupled with varying demand for which Piedmont's engineers are best qualified. Based on these highly technical inputs and analyses, Piedmont has been expanding and reinforcing its South Carolina transmission and distribution facilities for nearly 70 years in order to serve the ever-increasing demand of South Carolina customers for safe and reliable natural gas.³ At no time during this period does Piedmont recall this Commission ever having cause to insert itself into the processes utilized by the Company,

¹ See, e.g., PSCSC Rule 103-448 (requiring reasonable expansion of gas systems to serve new customers upon their request); PSCSC Rule 103-460 (requiring construction, installation, maintenance, and operation of gas systems to assure, as far as reasonably possible, continuity of natural gas service and uniformity of quality of natural gas service); PSCSC Rule 103-481 (requiring reasonable efforts to avoid interruptions of service and re-establishment of interrupted service within the shortest possible time).

² See PSCSC Rule 103-404.

³ Piedmont has gained more than 13,000 new customers in the last five (5) years alone representing system growth of approximately 9.0% during that period.

consistent with the Commission's Rules, to meet the goals of the provision of safe, reliable and reasonably priced natural gas service to the public that desires to receive such service.

It has always been the case that such service and any expansion of that service unavoidably involves the use of public right-of-way or private easement in order to place the transmission facilities necessary to deliver gas to South Carolina residential, commercial, and industrial customers who desire service from Piedmont. Without a functional, robust, and well-designed transmission system, it is literally impossible for Piedmont to provide the regulated utility services for which it is certificated by this Commission. Piedmont notes that it, like all utilities regulated by the Commission, is not guaranteed recovery of construction costs and is, therefore, incented to only construct projects that are necessary to provide safe and reliable service to its growing customer base.

It has also always been the case that the placement of transmission facilities, particularly over private easements obtained through the use of condemnation proceedings, has had the potential for controversy as it involves the involuntary taking of private property. For this reason, Piedmont attempts in every circumstance in which it is expanding transmission facilities to minimize or avoid the need for condemnation actions to the maximum extent possible by voluntary negotiations with landowners for permissive easements where public right-of-way is not adequate to support the project. Piedmont has been largely successful in this approach and it is the unusual case where Piedmont is required to resort to condemnation in order to obtain the right to place its facilities on private property.

The Company has recently increased its efforts to fully engage communities during the early stages of future projects based upon feedback received and the national discourse associated with natural gas infrastructure. Piedmont looks forward to the opportunities for additional engagement with the communities it serves and does not believe that the provision of burdensome, irrelevant information and needless hearings as recommended by the Environmental and Landowner Advocates will serve to benefit customers, landowners, or the Commission.

The fact that landowners impacted by Piedmont's limited use of condemnation do not like the exercise of rights of Eminent Domain granted to Piedmont by the State of South Carolina is neither surprising nor unexpected. Imposing on someone's rights to unfettered use of their land is a very serious matter and Piedmont fully understands the impact such actions can have on landowners and communities through which its transmission lines run. This is why Piedmont avoids condemnation of easements to the maximum extent possible.

Having acknowledged the legitimate concerns of landowners to the prospect of having private property condemned for utility infrastructure purposes, Piedmont would also point out two significant truths that are overlooked in the comments filed by the landowner groups in this proceeding. These are (1) that once Piedmont's facilities are in place, they are low-impact and demonstrably safe to operate, and (2) the long-standing calculus underlying Piedmont's right to place such facilities on private property through the exercise of condemnation,⁴ which is reflected in the

⁴ See S.C. Const. Ann. Art. I, § 13 ("Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, *unless the condemnation is for public use.*").

South Carolina statutes providing for condemnation rights, is that the larger public good derived from the availability of utility infrastructure outweighs and over-rides the interests of individual landowners in these circumstances, particularly where landowners have full access to the courts to determine just compensation for the takings involved in an exercise of Eminent Domain.⁵

It is a given in these situations, that many landowners – for reasons that have little to do with fiscal considerations – will not feel fully compensated for the reduction in property rights associated with the exercise of Eminent Domain by a public utility like Piedmont. This has always been the case where utilities have exercised rights of condemnation granted pursuant to state or federal law and there is nothing new or novel about this debate or the competing public policy and private property interests that are in competition in this scenario. One notable fact for the Commission’s consideration is that, by statute, the forum for resolving challenges to the right to engage in condemnation under South Carolina law is the Court of Common Pleas.⁶ The fact that there is an extremely long line of cases governing these processes is testament to the fact that these types of concerns are neither new nor novel.⁷

⁵ See S.C. Code Ann. § 28-2-460 (2021) (providing for a separate proceeding in equity to apportion a condemnation award); *id.* § § 28-2-470 (providing a condemnee with recourse to challenge the condemnor’s right to condemn the subject property in a separate proceeding filed in the court of common pleas in the county in which the property is located).

⁶ S.C. Code Ann. § 28-2-470 (2021).

⁷ See, e.g., *Bookhart v. Central Elec. Power Coop., Inc.*, 219 S.C. 414, 426 (1951) (holding that “[t]he generation and transmission of electricity for the purposes of furnishing light, heat, or power on equal terms to all within the range of service, is a public use for which the power of eminent domain may be exercised”); *Twin City Power Co. v. Savannah River Elec. Co.*, 163 S.C. 438, 471 (1930) (“The power of eminent domain may be exercised for the purpose of erecting and maintaining plants for generating electricity and distributing the same to the public for light, heat and power.”); *Riley v. Charleston Union Station Co.*, 71 S.C. 457, 486 (1905) (determining that a railroad station is a “public use”).

More recently, landowners and environmental groups have begun challenging new utility infrastructure, particularly natural gas infrastructure, based on the contention that it is either unnecessary (i.e. the utility does not actually need the new infrastructure to provide service to existing or new customers) or because the opponents of the infrastructure believe that, as a matter of energy policy, priority should be placed on the utilization of new so-called renewable sources of energy instead of more traditional energy sources like natural gas.

Piedmont's experience is that such arguments are typically not factually well-founded in that the persons raising the arguments do not have either the expertise or specific knowledge of Piedmont's systems and operations to reach such conclusions and their arguments in this regard are often inaccurate and based on conjecture.

It is also questionable as to whether the supposed alternative renewable energy sources are actually available or capable of replacing the existing proposed energy source with the same reliability or efficiency – or whether that goal is more in the nature of wishful thinking at this point in time. Nor do the proponents of changing energy policy toward a faster adoption of renewables (through the prohibition of expansion of existing sources of energy) address customer costs and preferences related to such a major and compulsory change in the provision of energy to the public – which is an important consideration in this circumstance.

All of this is to say, and Piedmont suspects that the Environmental and Landowner Advocates might even acknowledge, that much of the opposition to the expansion of natural gas infrastructure voiced in this docket is specifically intended to prevent or at least delay the construction of new natural gas transmission facilities by

Piedmont and other South Carolina natural gas distribution companies. This goal is driven by a particular set of beliefs about how South Carolina, and the United States as a whole, should provide energy for the future and the pace at which the conversion from existing energy sources to “renewable” energy sources should occur.

For example, the additional measures recommended by the SELC and endorsed by others include detailed costs of the project, information on whether the proposed project enters an area that is served by a provider of electricity, and a ratepayer impact. None of these requirements are related to Piedmont’s interactions with landowners and evidence that the goal of the recommended new procedures is the advancement of specific policy agendas. Piedmont’s recent increase in customers served in South Carolina (approximately 9.0% growth in customers over the last 5 years) and the fact that none of these policy matters have been codified by the General Assembly indicate that the citizens of South Carolina and their elected officials have not yet adopted these policy preferences.⁸ Adding layers of inefficient bureaucracy to the construction of natural gas infrastructure, and placing this Commission in the position of being an arbiter of energy choice for all South Carolina citizens would result in increased costs for all customers, would threaten Piedmont’s ability to honor its obligations to provide safe, reliable, and economic utility service to those South Carolina customers who desire such service, and would pervert the historic role of this Commission, all in an effort to satisfy the policy goals of a small group of environmental advocates. This effort to hijack Commission regulations and

⁸ It is also worth noting that Piedmont is required to comply with numerous federal and state environmental statutes and regulations when expanding its transmission system.

procedures to serve the minority positions espoused by these advocates should not be adopted by the Commission in this instance.

To be clear, Piedmont does not contest the fact that the concerns of these advocacy groups are legitimate subjects for public debate. In fact, they are important topics and should be considered in formulating the energy policy adopted by this State, and the nation as a whole. In Piedmont's view, however, this Commission has not historically been a policy-making body for the State of South Carolina. Further, adoption of a particular preference for how and when existing utility services are converted to alternative renewable forms of energy seems a topic better suited for the legislative and political processes than for this Commission.

Finally, while Piedmont has acknowledged the strategy being utilized by landowner and environmental advocates to stop or impede the construction of new natural gas infrastructure, Piedmont does not agree that this tactic is an appropriate way to try to force adoption of their views on what is fundamentally a policy issue concerning all of the residents of the State of South Carolina. Based on this conclusion, Piedmont respectfully suggests that the proposed revisions to the Commission's regulations posed by these parties should be rejected.

DCA Comments

In its Initial Comments, the DCA makes three proposals for rule changes that Piedmont wishes to address briefly. These are (1) a proposal to modify the time period specified for a utility to terminate service upon a customer's request for termination from a "reasonable period of time" to a more specific period; (2) a proposal to modify the time period specified for a customer to respond to a notice of

discrepancy that may cause termination of service from a “reasonable time” to some prescriptive period; and (3) a proposal to expand notice of termination of service from 10 days to 30 days and to implement a moratorium on service disconnections during the months of June through September. Piedmont believes that these modifications are unnecessary for the reasons set forth below and should not be adopted by the Commission.

While Piedmont does not generally oppose precision in the specification of timelines for compliance with the Commission’s Rules, the Company believes that the currently specified “reasonable period of time” for the Company to act upon a customer request to terminate service under Rule 103-441, is the appropriate standard. This is primarily due to the fact that many factors can influence how quickly the Company may be able to react to such a request. For example, a request to terminate service made on a Friday at 5:00 pm during November might reasonably be expected to take slightly longer to respond to than a similar request made on a Tuesday morning in May. Applying an inflexible standard to these two events would serve no practical purpose. Piedmont does not, as a practical matter, delay terminations of service in order to eke out a claim to an additional day or two of revenue from a terminating customer but instead schedules service terminations as promptly and efficiently as possible. But what constitutes prompt and efficient termination can vary somewhat based on the level of commitment of Piedmont’s service technicians to other matters, such as fall light up. Piedmont is not aware of any complaint that has ever been raised by a customer that it unreasonably delayed terminating service upon a request for termination of service by such customer and

the DCA has not supported its request with any evidence that a fixed time period would yield more responsive terminations for customers. Given these facts (or lack of facts), Piedmont respectfully submits that the DCA's recommendation seeks to provide a solution for a problem that simply does not exist.

The same logic applies to the suggestion to provide a more specific response time for customers responding to discrepancies that might lead to termination of service. And to be clear, in the context where a customer is faced with possible termination of service, Piedmont gains no advantage from such action and its interests and the customer interests in maintaining the consistency of service are aligned. A specific period designated for these actions may actually be less beneficial to customers than Piedmont's ability to work with customers to resolve discrepancies that might lead to termination of service in a reasonable period. Piedmont is also not aware of any actual problem here that requires a resolution.

Finally, under the existing rules, involuntary termination of service to a customer is the culmination of a long process whereby the Company does everything it can to assist the customer with maintaining service. Termination is the remedy of last resort after numerous notices and processes designed to allow avoidance of termination. But when the process has been followed and termination is appropriate, nothing is gained by adding an additional 20 days to the process, other than to potentially increase the collective costs of such terminations – which are ultimately paid for by Piedmont's other customers. Also, a summer moratorium on disconnections because it is potentially warm makes no sense for a natural gas utility because natural gas is not used to cool residences.

CONCLUSION

Based upon the foregoing, Piedmont respectfully requests that the Commission accept its Comments in this proceeding as set forth above and looks forward to continued participation in this proceeding.

Respectfully submitted, this the 14th day of April, 2021.

Piedmont Natural Gas Company, Inc.

/s/ T. Richmond McPherson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached is being served this date upon all of the parties to this docket electronically or by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, at the addresses contained in the official service list in this proceeding.

This the 14th day of April, 2021.

/s/ Richard K. Goley
Richard K. Goley